

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUDITH G SIEMERS
Claimant

HOPE HAVEN INC
Employer

APPEAL 20A-UI-02173-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/16/20
Claimant: Appellant (1R)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Judith Siemers (claimant) appealed a representative's March 4, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Hope Haven (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 23, 2020. The claimant participated personally. The employer participated by Danette Tolan, Community Living Manager, and Lora Elsenbast, Area Manager.

The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 25, 2007, as a full-time community living direct support professional. She signed for receipt of the employer's handbook when she was hired. The handbook prohibited employees from using written or verbal derogatory/unprofessional language to or about clients. The claimant worked with clients with mental illness in a group home setting.

On October 7, 2019, in the claimant's evaluation, her supervisor counseled the claimant about her lack of professionalism when working with clients. On November 7, 2019, the employer issued the claimant a written warning and demotion for use of derogatory language/swearing around clients. The employer notified the claimant that further infractions would result in termination from employment.

The claimant continued to swear to herself while working. She enjoyed talking with a client in the community. The two swore and used inappropriate language in their conversations.

On January 10, 2020, three clients asked the community living manager for a meeting regarding the claimant's behavior. On January 15, 2020, the community living manager met with the clients. The clients told the manager about the claimant's use of swearing around them and the use of a derogatory term for a body part. The manager referred the information to her area manager and the human resources department. On January 20, 2020, the employer terminated the claimant for inappropriate and unprofessional behavior.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. She knew that continuing to act inappropriately at work would result in her termination and yet she

continued to use inappropriate language in the presence of clients. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

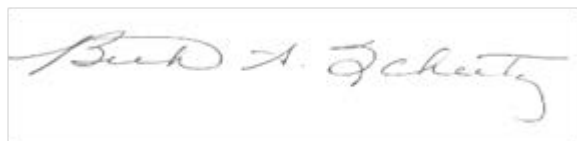
Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

This issue of the claimant's overpayment of benefits is remanded for determination.

DECISION:

The representative's March 4, 2020, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

This issue of the claimant's overpayment of benefits is remanded for determination.



Beth A. Scheetz
Administrative Law Judge

April 24, 2020
Decision Dated and Mailed

bas/scn